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*Attorneys for Plaintiffs and Proposed Plaintiff Class*

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE on behalf of herself and her minor child; JANE BOE, Sr. on behalf of herself and her minor child; JOHN COE, Sr. and JANE COE, Sr. on behalf of themselves and their minor children; JOHN FOE, Sr. on behalf of himself and his minor child; JANE GOE, Sr. on behalf of herself and her minor child; JANE LOE on behalf of herself and her medically fragile child; JANE JOE on behalf of herself and her medically fragile child; CHILDRENS HEALTH DEFENSE, and all others similarly situated,

Plaintiffs,

vs.

HOWARD ZUCKER, in his official capacity as Commissioner of Health for the State of New York; ELIZABETH RAUSCH-PHUNG, M.D., in her official capacity as Director of the Bureau of Immunizations at the New York State Department of Health; the NEW YORK STATE DEPARTMENT OF HEALTH; THREE VILLAGE CENTRAL SCHOOL DISTRICT;

Civil Action No.: 1:20-CV-0840 (BKS/CFH)

**MOTION FOR LEAVE TO PROCEED BY  
PSEUDONYM AND FOR PROTECTIVE  
ORDER – MEMORANDUM OF LAW  
AND PROPOSED ORDER**

MOTION FOR LEAVE TO PROCEED BY PSEUDONYM AND FOR PROTECTIVE ORDER –  
MEMORANDUM OF LAW AND PROPOSED ORDER - 1

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3 CHERYL PEDISICH, acting in her official  
4 capacity as Superintendent, Three Village  
5 Central School District; CORINNE KEANE,  
6 acting in her official capacity as Principal, Paul  
7 J. Gelinas Jr. High School, Three Village  
8 Central School District; LANSING CENTRAL  
9 SCHOOL DISTRICT; CHRIS  
10 PETTOGRASSO, acting in her official capacity  
11 as Superintendent, Lansing Central School  
12 District; CHRISTINE REBERA, acting in her  
13 official capacity as Principal, Lansing Middle  
14 School, Lansing Central School District;  
15 LORRI WHITEMAN, acting in her official  
16 capacity as Principal, Lansing Elementary  
17 School, Lansing Central School District;  
18 PENFIELD CENTRAL SCHOOL DISTRICT;  
19 DR. THOMAS PUTNAM, acting in his official  
20 capacity as Superintendent, Penfield Central  
21 School District; SOUTH HUNTINGTON  
22 SCHOOL DISTRICT; DR. DAVID P.  
23 BENNARDO, acting in his official capacity as  
24 Superintendent, South Huntington School  
25 District; BR. DAVID MIGLIORINO, acting in  
26 his official capacity as Principal, St. Anthony's  
27 High School, South Huntington School District;  
28 ITHACA CITY SCHOOL DISTRICT; DR.  
LUVELLE BROWN, acting in his official  
capacity as Superintendent, Ithaca City School  
District; SUSAN ESCHBACH, acting in her  
official capacity as Principal, Beverly J. Martin  
Elementary School, Ithaca City School District;  
SHENENDEHOWA CENTRAL SCHOOL  
DISTRICT; DR. L. OLIVER ROBINSON,  
acting in his official capacity as Superintendent,  
Shenendehowa Central School District; SEAN  
GNAT, acting in his official capacity as  
Principal, Koda Middle School, Shenendehowa  
Central School District; ANDREW HILLS,  
acting in his official capacity as Principal,

MOTION FOR LEAVE TO PROCEED BY PSEUDONYM AND FOR PROTECTIVE ORDER –  
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Arongen Elementary School, Shenendehowa Central School District; COXSACKIE-ATHENS SCHOOL DISTRICT; RANDALL SQUIER, Superintendent, acting in his official capacity as Superintendent, Coxsackie-Athens School District; FREYA MERCER, acting in her official capacity as Principal, Coxsackie-Athens High School, Coxsackie-Athens School District; ALBANY CITY SCHOOL DISTRICT; KAWEEDA G. ADAMS, acting in her official capacity as Superintendent, Albany City School District; MICHAEL PAOLINO, acting in his official capacity as Principal, William S. Hackett Middle School, Albany City School District; and all others similarly situated

Defendants.

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO  
PROCEED BY PSEUDONYM AND FOR PROTECTIVE ORDER**

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**INTRODUCTION**  
**AND STATEMENT OF MATERIAL FACTS**

Plaintiffs Jane Doe, Jane Boe, Sr., John Coe, Sr. and Jane Coe, Sr., John Foe, Sr. Jane Goe, Sr., Jane Loe, Jane Joe, and Jane Koe, Sr. (collectively the “Doe Plaintiffs”) respectfully request leave to proceed under pseudonyms on behalf of themselves and their minor children. The names provided herein for the Doe Plaintiffs are pseudonyms. In this action, the Doe Plaintiffs, along with other named and unnamed entities and similarly situated persons, seek to challenge policies and practices related to the rejection of medical exemptions written for medically fragile children to be exempt from one or more of the mandatory school immunization requirements.

The Doe Plaintiffs are all parents of medically fragile minor children, suing on behalf of themselves and their children and all others similarly situated.

This case requires discloses private medical histories of the minor children and their extended families. Some of the medical conditions include incontinence, serious and chronic disease, and other conditions that are of such a private and sensitive nature, particularly where they are the medical records of minors, that it would cause trauma to the families for the general public to have possession of this knowledge as it relates to the specific child.

Minors are entitled to proceed anonymously. Pursuant to Federal Rules of Civil Procedure 3.2(a)(3), the traditional method to so proceed is to use the child’s initials. In this instance, such protection is not sufficient to protect the children’s anonymity. The school

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3 districts are listed for each child, and if the parents' names are provided along with the children's  
4 initials, the identities of the children could easily be determined. Due to the particularly sensitive  
5 subject matter in this case, which includes detailed discussion of the children's private medical  
6 and immunization records, and due to the Doe Plaintiff's reasonable fears that disclosure of this  
7 subject matter to the general public will cause harm to their children, the Doe Plaintiffs seek  
8 leave to proceed pseudonymously.  
9

### 10 DISCUSSION

#### 11 **A. THIS COURT HAS AUTHORITY TO ALLOW PLAINTIFFS TO USE 12 PSEUDONYMS IN THIS CASE.**

13 Generally, pleadings must disclose the identities of the litigants. See Fed.R.Civ.P. 10(a)  
14 ("...the title of the complaint must name all the parties..."). But it is also well-established that  
15 the district court has the discretion to allow plaintiffs to use pseudonyms. See, e.g., *Santa Fe*  
16 *Independent School District v. Doe*, 530 U.S. 290, 294, 120 S.Ct. 2266, 147 L.Ed.2d 295 (2000);  
17 *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); *Doe v. Bolton*, 410 U.S. 179,  
18 93 S.Ct. 739, 35 L.Ed.2d 201 (1973); *Poe v. Ullman*, 367 U.S. 497, 81 S.Ct. 1752, 6 L.Ed.2d 989  
19 (1961); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1062-63 (9th Cir. 2000);  
20 *Doe v. Madison School Dist. No. 321*, 147 F.3d 832, 833 n. 1 (9th Cir. 1998), vacated on other  
21 grounds, 177 F.3d 789 (9th Cir.1999) (en banc); *James v. Jacobson*, 6 F.3d 233, 237 (4th  
22 Cir.1993); *Doe v. INS*, 867 F.2d 285, 286 n. 1 (6th Cir.1989); *Doe v. Stegall*, 653 F.2d 180, 185-  
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3 186 (5th Cir.1981); *Moe v. Dinkins*, 533 F.Supp. 623, 627 (S.D.N.Y.1981), *aff'd*, 669 F.2d 67  
4 (2d Cir.1982).

5  
6 **B. THE BALANCING TEST WEIGHS IN FAVOR OF ALLOWING**  
7 **PLAINTIFFS TO USE PSEUDONYMS**

8 Courts in the Second Circuit analyze ten factors in balancing plaintiffs' interest in  
9 anonymity against both the public interest in disclosure of plaintiffs' identity and prejudice to  
10 the defendants: "(1) whether the litigation involves matters that are highly sensitive and  
11 personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm  
12 to the party or even more critically, to innocent non-parties; (3) whether identification  
13 presents other harms and the likely severity of those harms, including whether the injury  
14 litigated against would be incurred as a result of the disclosure of the plaintiffs identity; (4)  
15 whether the plaintiff is particularly vulnerable to the possible harms of disclosure, particularly  
16 in light of his age; (5) whether the suit is challenging the actions of the government or that of  
17 private parties; (6) whether the defendant is prejudiced by allowing the plaintiff to press his  
18 claims anonymously, whether the nature of that prejudice (if any) differs at any particular  
19 stage of the litigation, and whether any prejudice can be mitigated by the district court; (7)  
20 whether the plaintiff's identity has thus far been kept confidential; (8) whether the public's  
21 interest in the litigation is furthered by the plaintiff to disclose his identity; (9) whether,  
22 because of the purely legal nature of the issues presented or otherwise, there is an atypically  
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26 MOTION FOR LEAVE TO PROCEED BY PSEUDONYM AND FOR PROTECTIVE ORDER –  
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3 weak public interest in knowing the litigants' identities; and (10) whether there are any  
4 alternative mechanisms for protecting the confidentiality of the plaintiff. (citing *Sealed*  
5 *Plaintiff v. Sealed Defendant*, 537 F.3d 185, 190 (2nd Cir. 2008)).

6 In this case, all of the factors counsel in favor of anonymity.

7  
8 First, the case revolves around detailed discussion of the private physical and mental  
9 medical histories and conditions of children. Many of these children have expressed humiliation  
10 at the idea that other children or the public at large might be privy to their intimate medical  
11 information, such as the inability to remain continent, or chronic illnesses and conditions that  
12 they struggle daily not to be defined by.

13 While medical privacy is not *per se* a reason to grant anonymity the fact that the parties  
14 that this motion seeks to protect are medically fragile children counsels in favor of granting the  
15 right to proceed by pseudonym. *See, e.g., Doe v. Blue Cross & Blue Shield United of Wisconsin*,  
16 112 F.3d 869, 872 (7th Cir.1997) (disallowing automatic use of fictitious name where opposing  
17 party does not object, despite the party's medical issue and that "many people are understandably  
18 secretive about their medical problems," but acknowledging that "fictitious names are allowed  
19 when necessary to protect the privacy of children, rape victims, and other particularly vulnerable  
20 parties or witnesses"). The psychological harm to children of being invaded and potentially  
21 stigmatized by social taunting, loss of future opportunities and blows to developing sense of self-  
22 worth, particularly for medically fragile children who have already suffered so much, cannot be  
23 overstated. Release to the public of any of their private and sensitive medical information could  
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MOTION FOR LEAVE TO PROCEED BY PSEUDONYM AND FOR PROTECTIVE ORDER --  
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3 cause severe trauma to the children. This potential trauma goes significantly beyond mere  
4 annoyance or fear of criticism.

5 Moreover, protecting the identities of the children is necessary to avoid any potential  
6 retaliation or stigmatization based on the child's immunization status. Immunization has become  
7 an increasingly emotionally charged topic. Additionally, many of the Doe Plaintiffs had religious  
8 exemptions to immunization and this suit may implicate analysis of their religious and spiritual  
9 beliefs. Courts have found that where the lawsuit might implicate religious beliefs of parents and  
10 children, granting the right to proceed under pseudonym is appropriate. *See, e.g., Doe v. Stegall*,  
11 653 F.2d 180,186 (5<sup>th</sup> Cir. 1981)(recognizing the special vulnerability of child-plaintiffs to  
12 threats of retaliation and privacy concerns related to their parents religious beliefs); *Doe v.*  
13 *Porter*, 370 F.3d 558 (6<sup>th</sup> Cir. 2004)(*"the district court did not abuse its discretion by granting*  
14 *protective order allowing parents and their minor children to litigate pseudonymously, given*  
15 *that the subject matter of the action forced parents to reveal their beliefs about religion, a*  
16 *particularly sensitive topic that could subject them to considerable harassment, and the case was*  
17 *brought on behalf of very young children, to whom heightened protection is granted."*  
18  
19  
20

21 Second, this action is against the government, primarily seeking injunctive and  
22 declaratory relief and challenging the constitutional validity of patterns and practices enacted by  
23 the state. This case turns on legal questions not the identity of any individual, which are not  
24 material to the resolution of any issues presented by this case.. The public's interest in open  
25 judicial proceedings will only be minimally affected (if at all) if the Doe Plaintiffs are permitted

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1  
2 to proceed by pseudonym. The Doe Plaintiffs are representative of families across the state  
3 experiencing the same burdens on their constitutional rights and on their ability to safeguard their  
4 children's health. All of the Doe Plaintiffs have had one or more licensed medical professional  
5 affirm that one or more of the mandated immunizations could put their child at risk of substantial  
6 harm. The medical professionals are named, and specific underlying facts provided. Protecting  
7 the identities of the individual children does not deprive the public the right to inspect the orders  
8 or opinions of the court on the underlying constitutional issue. The use of pseudonyms for the  
9 Doe Plaintiffs named in this case would strike the appropriate balance between ensuring the  
10 public has access to the record and protecting the children from trauma and any retaliatory harm  
11 that may ensue from the public exposure or the parents' decision to assert their constitutional  
12 rights by participating in this lawsuit.  
13

14  
15 In cases such as this, the public's interest in having important constitutional questions  
16 decided outweighs the general interest in knowing who is asking courts to decide those  
17 questions. *See Advanced Textile Corp.*, 214 F.3d 1058, 1073 n.15 (9th Cir. 2000) ("For instance,  
18 the question whether there is a constitutional right to abortion is of immense public interest, but  
19 the public did not suffer by not knowing the plaintiff's true name in *Roe v. Wade*."). Whether the  
20 state is violating the constitutional rights of thousands of medically fragile students and their  
21 families is a crucial constitutional issue that deserves a decision on the merits. *See id.* at 1073. It  
22 is far more important than the public's right to know the names of the people bringing the  
23 challenge. The public right to scrutinize governmental functioning is not so completely impaired  
24

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26 MOTION FOR LEAVE TO PROCEED BY PSEUDONYM AND FOR PROTECTIVE ORDER –  
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1  
2 by a grant of anonymity to a party as it is by closure of the trial itself. Party anonymity does not  
3 obstruct the public's view of case issues joined or the court's performance in resolving them. The  
4 assurance of fairness preserved by public presence at a trial is not lost when one party's cause is  
5 pursued under a fictitious name. These crucial interests served by open trials are not inevitably  
6 compromised by allowing a party to proceed anonymously. *Doe v. Stegall*, 653 F.2d 180, 185  
7 (5th Cir. 1981). The public's interest in having the Court decide the merits of the constitutional  
8 issue outweighs the public's interest in knowing which citizens are asking the Court to answer  
9 that question  
10  
11

12 Third, there is little risk of unfairness to the defendants. The Doe Plaintiffs agree to  
13 disclose their identities to the Court and to the defendants so defendants will not be impeded in  
14 defending their case.  
15

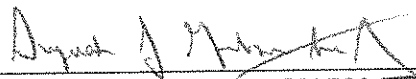
16 As stated above, the suit is focused on challenging the constitutionality of policies,  
17 patterns and practices of the state acting through their agents and employees. Publicly revealing  
18 the identities of the children and families acting as named plaintiffs burdened by this conduct is  
19 not necessary to protect the good reputation of any of the named defendants. Nor is it necessary  
20 to address the legal arguments raised in this class action suit.  
21

### 22 Conclusion

23 When balancing the factors above, the Doe Plaintiffs' interests in preserving the privacy  
24 and emotional and psychological safety of their children outweighs the public's interest in  
25

disclosure of their identity or any prejudice to the defendants. For the foregoing reasons, the Court should grant this Motion and enter the Proposed Protective Order.

RESPECTFULLY SUBMITTED,



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Ithaca, New York 14850  
*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE on behalf of herself and her minor child; JANE BOE, Sr. on behalf of herself and her minor child; JOHN COE, Sr. and JANE COE, Sr. on behalf of themselves and their minor children; JOHN FOE, Sr. on behalf of himself and his minor child; JANE GOE, Sr. on behalf of herself and her minor child; JANE LOE on behalf of herself and her medically fragile child; JANE JOE on behalf of herself and her medically fragile child; CHILDRENS HEALTH DEFENSE, and all others similarly situated,

Plaintiffs,

vs.

HOWARD ZUCKER, in his official capacity as Commissioner of Health for the State of New York, ELIZABETH RAUSCH-PHUNG, M.D., in her official capacity as Director of the Bureau of Immunizations at the New York State Department of Health, the NEW YORK STATE DEPARTMENT OF HEALTH; CHERYL PEDISICH, acting in her official capacity as Superintendent, Three Village Central School District; THREE VILLAGE CENTRAL SCHOOL DISTRICT; CORRINE KEANE, acting in her official capacity as Principal, Paul J. Gelinas Jr. High School, Three Village Central School District; LANSING CENTRAL SCHOOL DISTRICT; CHRIS PETTOGRASSO, acting in her official capacity as Superintendent, CHRISTINE REBER, acting in her official capacity as Principal, Lansing Middle School, Lansing Elementary School,

Civil Action No.:

**MOTION FOR LEAVE TO PROCEED BY  
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MOTION FOR LEAVE TO PROCEED BY PSEUDONYM AND FOR PROTECTIVE ORDER --  
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1  
2 LORI WHITEMAN, acting in her official  
3 capacity as principal, Lansing Central School  
4 District; LORI WHITEMAN acting in her  
5 official capacity as Principal of Lansing  
6 Elementary School; CHRISTINE REBERA  
7 acting in her official capacity Principal of  
8 Lansing Middle School; PENFIELD  
9 CENTRAL SCHOOL DISTRICT; DR.  
10 THOMAS PUTNAM, acting in his official  
11 capacity as Superintendent, Penfield Central  
12 School District; SOUTH HUNTINGTON  
13 SCHOOL DISTRICT; DR. DAVID P.  
14 BENNARDO, acting in his official capacity as  
15 Superintendent, South Huntington School  
16 District; BR. DAVID MIGLIORINO, acting in  
17 his official capacity as Principal, St. Anthony's  
18 High School, South Huntington School District;  
19 ITHACA CITY SCHOOL DISTRICT; DR.  
20 LUVELLE BROWN, acting in his official  
21 capacity as Superintendent, Ithaca City School  
22 District; SUSAN ESBASCH, acting in her  
23 official capacity as President, Beverly J. Martin  
24 Elementary School, Ithaca City School District;  
25 SHENENDEHOWA CENTRAL SCHOOL  
DISTRICT; DR. L. OLIVER ROBINSON,  
acting in his official capacity as Superintendent,  
Shenendehowa School District; SEAN GNAT,  
acting in his official capacity as Principal, Koda  
Middle School, Shenendehowa Central School  
District; ANDREW HILLS, acting in his  
official capacity as Principal, Arongen  
Elementary School, Shenendehowa Central  
School District; COXSACKIE-ATHENS  
SCHOOL DISTRICT; RANDALL SQUIER,  
Superintendent, acting in his official capacity as  
Superintendent, FREYA MERCER, acting in  
her official capacity as Principal, Coxsackie-  
Athens High School, Coxsackie-Athens School  
District; ALBANY CITY SCHOOL

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DISTRICT; KAWEEEDA G. ADAMS, acting in her official capacity as Superintendent, Albany City School District; MICHAEL PAOLINO, acting in his official capacity as Principal, William J. Hackett Middle School, Albany City School District; and all others similarly situated  
 .Defendants.

**ORDER**

Upon consideration of plaintiff's Motion for Permission to Proceed in Pseudonym and for Protective Order, and defendants' response thereto, it is hereby **ORDERED** that said Motion is **GRANTED. IT IS FURTHER ORDERED** that:

1. The Doe Plaintiffs may proceed in pseudonym and the docket shall continue to reflect plaintiff's names as indicated in the caption.
2. Plaintiffs will be referred to by their pseudonyms in all depositions, pleadings and other documents related to this litigation, and the plaintiff shall be allowed to endorse documents related to this litigation using the same pseudonyms.
3. The identity of Jane Doe et al and their addresses shall be available to the attorneys of record and in-house counsel for the defendants, who shall not disclose or permit disclosure thereof, except to the following persons:
  - a. Their law partners, associates and persons employed in the law offices of such attorneys, and other in-house counsel;

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b. The employees of defendant who have knowledge of the facts alleged in the Amended Complaint;

c. *Bona fide* outside experts and their employees, not on the staff of any party, consulted by such attorneys in the prosecution or defense of the claims herein;

d. A person whose deposition is to be taken in this action, but only to the extent necessary for the deposition; and

e. Any person who potentially possesses information that is relevant to plaintiff's claims or defendant's defense.

4. Each person to whom the identity of Jane Doe et al is to be disclosed pursuant to this Order, shall agree in advance:

a. That he or she will not disclose the identity of the protected party to any person not entitled to know his/her identity under this Order; and

b. That he or she will not use the identity of the protected party except in connection with the prosecution or defense of the claims herein.

5. In the event defendant believes it is necessary in the defense of the claims herein to disclose the identity of a protected party to persons other than those specified in this Order, defendant shall communicate with plaintiff's counsel and if agreement cannot be reached in writing, the matter shall be determined by the Court.

6. Attendance at any part of any deposition of which the identity of a protected party is disclosed shall be limited to those to whom disclosure of such information can be

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2 made pursuant to this Order, and only after they have complied with the terms of  
3 this Order.  
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5 7. In all proceedings held before this Court, including trial, all counsel, witnesses, and  
6 court personnel present shall refer to plaintiff by his/her pseudonym.

7 8. In all proceedings held before this Court, including trial, plaintiff's photograph shall  
8 not be taken by members of the media and plaintiff's picture shall not be drawn by the  
9 courtroom artists.  
10

11 9. The terms of this Order shall remain in effect until further Order of this Court.

12 **AND IT IS SO ORDERED**

13 Dated:  
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15

16 UNITED STATES DISTRICT JUDGE  
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